

VU Research Portal

Foreword

Lodder, Arno R.

published in

Online Family Dispute Resolution
2021

DOI (link to publisher)

[10.1007/978-3-030-64645-5](https://doi.org/10.1007/978-3-030-64645-5)

document version

Publisher's PDF, also known as Version of record

document license

Unspecified

[Link to publication in VU Research Portal](#)

citation for published version (APA)

Lodder, A. R. (2021). Foreword. In E. Wilson-Evered, & J. Zeleznikow (Eds.), *Online Family Dispute Resolution* (pp. v-vii). (Law, Governance and Technology Series book series (LGTS); Vol. 45). Springer Science.
<https://doi.org/10.1007/978-3-030-64645-5>

General rights

Copyright and moral rights for the publications made accessible in the public portal are retained by the authors and/or other copyright owners and it is a condition of accessing publications that users recognise and abide by the legal requirements associated with these rights.

- Users may download and print one copy of any publication from the public portal for the purpose of private study or research.
- You may not further distribute the material or use it for any profit-making activity or commercial gain
- You may freely distribute the URL identifying the publication in the public portal ?

Take down policy

If you believe that this document breaches copyright please contact us providing details, and we will remove access to the work immediately and investigate your claim.

E-mail address:

vuresearchportal.ub@vu.nl

Foreword

This is a valuable book, written by two renowned scholars. The title is self-explanatory: *Online Family Dispute Resolution: Evidence for Creating the Ideal People and Technology Interface*. It is not just a work on resolving family disputes online but provides even evidence. Elisabeth Wilson-Evered is specialised in innovation and transformation within organisations. Her psychology background is perfectly complimentary with John Zeleznikow's expertise in dispute resolution and information systems. A dream team, to borrow terminology from the sports domain Elisabeth also works in: "In the sport context, her passion is on leadership integrity and creating system-wide leadership to address corruption and unethical behaviour". Before I deliver some comments on the content of the book, first some personal words against the background of my take on the field of ODR.

Over 25 years ago, in December 1993, I first met John Zeleznikow, when he presented at a conference in Florence. This was a memorable conference, and the environment, to me obviously in particular the river, Arno, is special. I did return only twice. In 2008 to deliver a keynote at the international ODR workshop, part of a successful series John and I started in 2003 in Edinburgh. That meeting was fruitful and attended by a little over 30, quite influential people: Ethan Katsh, Colin Rule, Ernie Thiessen, Orna Rabinovich, Julia Hörnle, Ben Davis, and many more.

A week ago I visited Florence for the third time, at the *Inaugural Conference of the IACL Research Group on Algorithmic State, Society and Market: Constitutional Dimensions*.¹ The times they are a changin'. In 2007, David Larson referred to this Bob Dylan song at his JURIX keynote on ODR, or technology-mediated disputed resolution as he calls it, and I also did believe in the opportunities of ODR back then. Right now, I am a bit cynical. During 2000–2008, the success of ODR seemed inevitable to me, from 2009 to 2013 I lost hope and interest, then I got optimistic

¹<http://www.algorithmicstate.eu/>.

again because of the EU ADR Directive and ODR platform.² The recent evaluations (e.g. December 2017) of this platform, and the fact that hardly anyone has heard of it even three years after its launch, does not make me very hopeful.

Since the beginning days of ODR, low-value e-commerce disputes were seen as one of the most suited domains for the resolution of online disputes. First, because the dispute has an online origin, so it seems logical to resolve conflicts online after an online transaction. Second, because courts, in particular in an international context, are not fit for resolving these kind disputes and are also too expensive. The European Union is a big proponent of this argument. They adduced it 20 years ago, 10 years ago, and still today. Their argument is that consumers would trust cross-border e-commerce disputes better if they knew their conflicts would be adequately resolved. The European Union also believes that the amount of cross-border EU transactions is still low because of the lack of trust. However, for many years EU citizens buy from service providers in countries outside the EU. For 20 years they purchase from US websites, and over the last years from Chinese sites, notably Alibaba. Plus, consumers are not interested in resolving via ODR. Rather, they contact the seller directly or post a negative review. That is also what students at the London School of Economics said when I gave a guest lecture on ODR a couple of years ago. Last March, however, quite a few vLSE students in the same course believed that if ODR is convenient and inexpensive, consumers might be even interested in resolving low-value disputes by ODR. Clearly, the last word has not been spoken on this topic.

Where I no longer believe ODR is a right tool for low-value e-commerce disputes, I never lost faith in resolving family disputes online. I also regularly tell people about the interesting tools John Zeleznikow developed over the years. Like last week at the first meeting of the Dutch association for AI and Robot law, when I met an attorney specialised in criminal and family law, I told her about John and in particular his Family Winner (and to give it a popular twist, referred to his appearance with Emilia Bellucci in the national broadcasted New Investors TV show). The distribution mechanism of their program is appealing and easily explained so to award 100 points according to your preferences to the items in the estate. If you like the record albums, you give it 10 points, if not 1, etc. After this process, probably both ex-partners get over 70 out of 100 points they awarded to the items.

Back to the book. It contains six chapters. The first chapter sketches what happened over the last 20–30 years. The authors say “In Australia, mediation—generally facilitative mediation—has been used to handle disputes in the family arena for about twenty years”, but since the footnote mentions the late 1980s we might as well say thirty years. From a legal perspective, an important development has been *The 2006 Reforms to the Australian Family Law Act*. I also learned a new term, OFDR: Online Family Dispute Resolution.

²Cortes, Pablo and Lodder, Arno R., Consumer Dispute Resolution Goes Online: Reflections on the Evolution of European Law for Out-of-Court Redress. *Maastricht Journal of European and Comparative Law* 2014/1, <https://ssrn.com/abstract=2414098>.

The second chapter is about Artificial Intelligence and ODR. It describes a wide range of very interesting programs. As is generally known: “For a long time, AI was confined to theory, but over the last 5 years in particular, due to progress in machine learning, AI is used by all big tech companies and many start-ups”.³ It is not necessarily machine learning that is used in OFDR, but the timing seems right to push these applications to a wider practical use.

The good news regarding my previous observation is witnessed in Chap. 3 on Current Research and Practice in Online Family Dispute Resolution that opens with “The exponential growth of Online Family Dispute Resolution (OFDR) means that consumers are now presented with a range of options on the market to suit their needs”. And in addition, the evidence the authors provide stems positive: “Of those programs located by the review, it was evident that whilst more methodologically rigorous research is required, preliminary evidence shows support for OFDR effectiveness in reaching desirable and fair outcomes”. Chapter 4 follows with an excellent and detailed case study on the Relationships Australia Queensland’s Online Family Dispute Resolution System, and Chap. 5 includes cultural aspects related to indigenous people.

In the nicely elaborated Chap. 6, the authors share concluding thoughts. The authors state: “It has been the intention of this book to outline the current state of OFDR services as they are used within Australia. Although Australia has been identified as a leader in ODR and OFDR services, a comprehensive documentation of its history in the field, its services, and its unique considerations for service development and provision”. I presume the authors meant to continue this sentence with something like “has wider meaning”. I could not deny that. This book is an interesting account of one of the areas of dispute resolution where the use of online tools is a natural addition, if not (largely) replacement of offline practice.

Vrije Universiteit Amsterdam, Of
Counsel SOLV Lawyers, Amsterdam,
The Netherlands
19 May 2019

Arno R. Lodder

³A.R. Lodder (2019), Algorithms: what, how, and particularly why?, *LSE POLICY BRIEFING* 34, MAY 2019.